

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6178 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHANABHAI ISHWARBHAI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KC SHAH, A.G.P., for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 18/09/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner - detenu - Shanabhai Ishwarbhai Vasava has brought under challenge the detention order dated 6th April 1996 rendered by the respondent No.2 u/s.3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985), hereinafter referred to as "the PASA Act".

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C to the petition. They inter-alia indicate that the detenu by himself and with the aid of his associates has been carrying on criminal and anti-social activities of storing and selling illicit liquor and following prohibition offences have been registered in Bharuch City "A" Division Police Station :

1. CR III-109/95 U/s. 66B of the Bombay Prohi.Act.
dtd.23.1.95 1 ltrs. of liquor valued Rs.20/-.
Pending trial. Enlarge on bail of Rs.500/-.
2. CR III-122/95 - do -
dtd.25.1.95
3. CR III-272/95 U/ss.66B,65E of the Bombay Prohi.
dtd.18.2.95 Act. 2 ltrs. of liquor valued Rs.40/-. Pending trial. Enlarged on bail of Rs.500/-.
4. CR III-975/95 U/ss.66B,65E of the Bombay prohi.
dtd.11.9.95 Act. 9 ltrs. of liquor valued Rs. 180/-. Pending trial. Enlarged on bail of Rs.1000/-.
5. CR III-104/95 U/ss.66B,65E of the Bombay prohi.
dtd.3.2.96 Act. 15 ltrs. of liquor valued at Rs. 300/-. Pending investigation. Enlarged on bail of Rs.1000/-.
6. CR III-188/95 U/ss.66B,65E of the Bombay Prohi.
dtd.4.3.96 Act. 30 ltrs. of liquor valued at Rs.600/-. Pending investigation. Enlarged on bail of Rs.1000/-.
7. CR III-196/96 U/ss. 66B, 65E, 81 of the Bombay
dtd.6.3.96 Prohibition Act. 16 ltrs. of liquor valued Rs.320/-. Pending investigation. Enlarged on bail of Rs.500/-.

It may be noted that reference of the bail applications and orders passed thereon has been made in the grounds of detention. It may also be noted that the detaining authority has relied upon the bail applications and the orders of bail passed in all the aforesaid cases for its subjective satisfaction that even after the bail the petitioner has been indulging in the commission of

offences and criminal activity.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of three witnesses have been relied upon. They indicate about the incidents occurring in the month of January & February, 1996. All the incidents indicate threatening and beating the concerned witnesses and creating atmosphere of fear amongst the people.

4. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention as also the continued detention on number of grounds inter-alia on the ground that the petitioner has not been supplied with the copy of Bail Application and the Bail order passed in respect of CR III-272/95 dated 18.2.1995 registered at Bharuch City "A" Division Police Station. According to the petitioner the said documents are vital and relevant for the purpose of making effective representation, since the detaining authority has relied upon the same. Non-supply of the bail order has violated the petitioner's fundamental right guaranteed under Article 22(5) of the Constitution of India for making effective representation and, therefore, continued detention of the petitioner has become illegal. It is also not in dispute that a demand was made for supply of such documents at the earliest point of time from the side of the detenu.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention as also continued detention on number of grounds inter-alia on the ground that the detenu has not been supplied copies of bail application and the bail order as referred above. In respect of the aforesaid ground of challenge against the impugned order of detention and continued detention under the said order reference has been made to a decision of the Apex Court in the case of Abdul Sathar Ibrahim Manik V/s. Union of India, reported in AIR 1991 SC 226, which in turn has referred to M.Ahmed Kutty V/s. Union of India, reported in 1990 (2) SCC Page 1. The principle is that in a case where detenu is released on bail and is at liberty at the time of passing of order of detention, then the detaining authority has to necessarily rely upon such documents as that would be a vital ground for detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the

copies should also be supplied to the detenu. As stated above, in the present case also such vital documents as bail application and the bail order in respect of the aforesaid C.R. number have not been supplied to the detenu resulting in adversely affecting the right of making effective representation available to the detenu under Article 22(5) of the Constitution of India.

6. There are other grounds of challenge levelled against the order of detention. However, in view of the fact that the petitioner would succeed on the aforesaid ground of challenge to the continued detention, it would not be necessary to deal with the other grounds. Hence, following order is passed :-

The continued detention of the petitioner detenu is held to be illegal and is hereby put an end to. The petitioner - detenu Shanabhai Ishwarbhai Vasava is, therefore, directed to be set at liberty forthwith if he is not required to be detained in any other case. Rule made absolute accordingly.

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